

# OHIO STATE LAW JOURNAL

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Volume 19

SUMMER 1958

Number 3

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## PROPOSED CHANGES IN FEDERAL ADMINISTRATIVE PRACTICE AND PROCEDURE

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### FOREWORD

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The field of administrative law commands the respect of and demands study by every lawyer, if for no other reason than that in seventy short years it has mushroomed to gigantic proportions, affecting the daily lives of virtually every American. Mr. J. Smith Henley, Director of the Office of Administrative Procedure, has estimated that the amount of adjudicating and deciding done by the some 130 federal agencies presently authorized, exceeds the volume of civil litigation handled in all of our federal courts. Compared to the traditionally slow development of most areas of the law, this growth is phenomenal.

For nearly fifty of its seventy years, administrative law was a field for specialization by relatively few lawyers. It had no great import in the majority of general practices, and the average American citizen had little personal contact with federal agencies. However, beginning with the early thirties, the federal octopus began to sit up and take notice of the rapid development in the field of administrative law. During the period from the passage of the first Walter-Logan Bill in 1935, until the McCarran Bill, which became the Administrative Procedure Act of 1946, the legal profession became greatly aroused, and federal legislation in this area became a matter of general concern. The lawyers of America were a very active and potent force in the ultimate enactment of the APA, thought at the time to be a "Bill of Rights" for the citizens in all his dealings with federal administrative agencies.

The passage of this act was a great accomplishment, one of which all lawyers should be proud. Unfortunately, however, this great "Bill of Rights" has been whittled away and eroded until today it stands as a worn monument on a mighty battlefield, pockmarked by the many skirmishes which have taken place since 1946.

This erosion is partly the fault of the agencies themselves, but an

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appreciable portion of the destruction is directly attributable to court interpretation and decisions, many of which it appears do not conform to the true intent of the Congress. Many sections of the act have been limited or negated by judicial interpretations.

The net effect of this misconstruction of congressional intent is that the basic rights and guarantees of fair treatment for everyone who comes before, or into contact, or contest with federal administrative agencies have been virtually eliminated. Much of the protection for which so many fought so hard to have written into the 1946 act, has been completely negated by court interpretations.

Perhaps the extent to which the Administrative Procedure Act has been rendered ineffective may be blamed partially on us lawyers. Perhaps in our pride of accomplishment subsequent to securing passage of the 1946 act, we relaxed our efforts and thus slipped backward, rather than waging a continuing battle for additional needed reforms. But certainly this is no longer the position of the legal profession. For several years now, the great and growing weaknesses in the existing legislation have been readily apparent and our profession has now become active once more to eliminate them in this important area.

The American Bar Association has launched another tremendous program directed at rectifying many of the pressing needs in the administration of justice by federal agencies.

*First*, a new administrative code providing: (1) more effective public information on the administrative process; (2) improvement in the administrative rule-making process through requiring formal hearings for virtually all rule-making hearings; (3) improvement in hearing and decision processes through tightening evidence rules in formal hearings, requiring an initial decision by the presiding hearing officer, and providing that findings of fact in the initial decision may not be set aside unless contrary to the weight of evidence; and (4) more effective judicial review of agency proceedings.

*Second*, legislation to establish: (1) an Office of Administrative Practice to coordinate at the inter-agency level procedural rules and public information practices; (2) a Division of Hearing Commissioners to appoint and assign these commissioners and to administer revised laws governing hearing commissioners; and (3) a Division of Legal Services to administer a simplified classification system for civilian attorney positions, giving full recognition to their important function and the professional independence that function requires. This legislation also covers appearances before federal agencies in a representative capacity by both lawyers and non-lawyers.

*Third*, legislation to: (1) vest responsibility for the Defense Department legal staff in a General Counsel ranking as an Assistant Secretary of Defense; (2) vest responsibility of the legal staffs of each separate service branch in a General Counsel ranking as an Assistant Secretary;

and (3) establish for each service branch a JAG Corps under a Judge Advocate General, ranked as a lieutenant general or vice admiral.

*Fourth*, legislation to establish special courts, as a part of the judicial system, insuring independence in areas presently subject to administrative action. Special courts presently contemplated are a Federal Trade Court, a Labor Court, and a transfer of the present Tax Court from the executive to the judicial branch of government.

Such is our program to bring the federal law up to date and meet the needs of technological, economic and social changes of our era. We believe it is a sound and beneficial program, and a necessary one in this important field.

It is clear that immediate concrete action is mandatory. But effective action must always be undergirded by ample research and a clear understanding of the problems involved. Exhaustive analysis of administrative law problems as undertaken in this symposium by eminent authorities in the field are invaluable as instruments of information to those who must promote the proposed changes before Congress, to the public who must support the needed remedies, and to the legislators who must ultimately make the final decision.

It was with the utmost interest and anticipation that I learned of the plans for this survey of the many problems and needed reforms in the field of administrative law, and it is with great pleasure that I witness its completion. No lawyer can afford to be uninformed in the great and growing area of administrative law, and certainly the authors of this symposium are the "Voice of Experience."